



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

December 20, 2021

VIA ELECTRONIC MAIL:

Mr. Cliff Bennett
Four County Lawn & Landscaping
3123 S 390 W
Pleasant Lake, IN 46779
cliffbennet@gmail.com

Re: Notice of Violation and Proposed Agreed Order
for Violations Identified via Compliance Review
Cliff Bennett
Pleasant Lake, Steuben County
Case No. 2021-28322-A

Dear Mr. Cliff Bennett:

A representative of the Indiana Department of Environmental Management ("IDEM"), Office of Air Quality, conducted a review of reports concerning your property located at 3123 S 390 W in Pleasant Lake, Indiana. As a result of information obtained during that review, IDEM alleges that a violation of 326 IAC 4-1 occurred. Specifically, the open burning of non-approved materials.

In accordance with IC 13-30-3-3, this letter includes a Notice of Violation that sets forth the alleged violation and an Agreed Order that provides Cliff Bennett the opportunity to settle this enforcement action. IDEM encourages settlement by Agreed Order when possible to quickly correct environmental violations and avoid litigation.

The alleged violation identified in the Notice of Violation are among those that IDEM has determined qualify for expedited enforcement. This means that the enclosed Agreed Order is non-negotiable, and it represents IDEM's best settlement offer in this matter. The civil penalty included in the Agreed Order is the penalty amount that IDEM will accept only for the settlement of the alleged violation identified therein under its expedited enforcement program.

If Cliff Bennett agrees to settle this enforcement action in accordance with the enclosed Agreed Order, he should sign and return the entire original Agreed Order within sixty (60) days of receipt to IDEM at the following address:

Andrew Staffelbach, Case Manager
Compliance and Enforcement Branch – Mail Code 61-53

Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251
astaffel@idem.in.gov

The civil penalty should be sent to the address listed in the Agreed Order within fifteen (15) days of your receipt of a copy of the final adopted Agreed Order. The final adopted Agreed Order will be mailed to you after it is approved and signed by the Assistant Commissioner of IDEM's Office of Air Quality.

IDEM is not required to extend the offer of entry into the Agreed Order for more than sixty (60) days. Because Indiana law allows a source to enter into an Agreed Order without admitting that the violation occurred, the attached Agreed Order includes this non-admission language. (See line 3 of the first paragraph of the Agreed Order.) If the Agreed Order is not entered into, IDEM may proceed with additional enforcement action requiring compliance with 326 IAC 4-1 and may seek monetary penalties in accordance with IDEM's Civil Penalty Policy (ID No. Enforcement 99-0002-NPD), which likely will result in a greater penalty than the penalty amount offered in this Agreed Order.

Please contact Andrew Staffelbach, Case Manager, of my staff at 317-233-6901 or astaffel@idem.in.gov if you have any questions.

Sincerely,



David P. McIver, Chief
Enforcement Section
Office of Air Quality

cc: Steuben County Health Department
Andrew Staffelbach, Compliance and Enforcement Branch, Office of Air Quality
Ling Tapp, Compliance and Enforcement Branch, Office of Air Quality
Martin Yeates, Compliance and Enforcement Branch, Office of Air Quality



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December 20, 2021

NOTICE OF VIOLATION

Mr. Cliff Bennett
Four County Lawn & Landscaping
3123 S 390 W
Pleasant Lake, IN 46779
cliffbennet@gmail.com

Case No. 2021-28322-A

Based on an investigation, the Indiana Department of Environmental Management ("IDEM") has reason to believe that Cliff Bennett ("Respondent") has violated environmental 326 IAC 4-1. The violation is based on the following:

1. Respondent owns and operates a lawn and landscaping business located at 3123 S 390 W in Pleasant Lake, Steuben County, Indiana (the "Site").
2. Pursuant to 326 IAC 4-1, open burning is prohibited unless exempted, allowed by rule, or an approval is obtained.

On December 1, 2021 open burning of trash, shingles and furniture for disposal purposes was conducted on the Site owned by Respondent in violation of 326 IAC 4-1.

In accordance with IC 13-30-3-3, the Commissioner herein provides notice that a violation may exist and offers an opportunity to enter into an Agreed Order providing for the actions required to correct the violation and for the payment of a civil penalty for the violation. The Commissioner is not required to extend this offer for more than sixty (60) days. An Agreed Order for your consideration is attached. As noted on the attached Agreed Order, it is a qualified offer of settlement of this matter and, therefore, is inadmissible pursuant to Indiana's Rules of Evidence.

As provided in IC 13-30-3-3, an alleged violator may enter into an Agreed Order without admitting that the violation occurred. IDEM encourages settlement by Agreed Order to quickly correct environmental violations and to avoid litigation.

If the Agreed Order is not entered into within sixty (60) days of receipt of this Notice of Violation, the Commissioner may proceed with additional enforcement action requiring compliance with 326 IAC 4-1 and may seek additional monetary penalties in

accordance with IDEM's Civil Penalty Policy (ID No. Enforcement 99-0002-NPD). Pursuant to IC 13-30-4-1, the Commissioner may assess penalties of up to \$25,000 per day for each violation.

Please contact Andrew Staffelbach, Case Manager, of my staff at 317-233-6901 or astaffel@idem.in.gov if you have any questions.

For the Commissioner:

Date: December 15, 2021



David P. McIver, Chief
Enforcement Section
Office of Air Quality

cc: Steuben County Health Department
Andrew Staffelbach, Compliance and Enforcement Branch, Office of Air Quality
Ling Tapp, Compliance and Enforcement Branch, Office of Air Quality
Martin Yeates, Compliance and Enforcement Branch, Office of Air Quality



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Commissioner

Respondent Name: Cliff Bennett
Case Number: 2021-28322-A

AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to IC 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner ("Complainant") of the Indiana Department of Environmental Management ("IDEM"), a department of the State of Indiana created by Indiana Code ("IC") 13-13-1-1.
2. Respondent is Cliff Bennett ("Respondent"), who owns and operates a lawn and landscaping business located at 3123 S 390 W in Pleasant Lake, Steuben County, Indiana (the "Site").
3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation ("NOV") via electronic mail to:

Mr. Cliff Bennett
Four County Lawn & Landscaping
3123 S 390 W
Pleasant Lake, IN 46779
cliffbennet@gmail.com
5. Based on IDEM's review, the following violation was in existence or identified by a representative of IDEM's Office of Air Quality ("OAQ").

Pursuant to 326 IAC 4-1, open burning is prohibited unless exempted, allowed by rule, or an approval is obtained

On December 1, 2021 open burning of trash, shingles and furniture for

disposal purposes was conducted on the Site owned by Respondent in violation of 326 IAC 4-1.

6. In recognition of the settlement reached, Respondent waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective ("Effective Date") when it is adopted via signature by Complainant or Complainant's delegate, and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. This offer to settle the allegations contained in this Agreed Order does not bind or obligate the parties of this enforcement action if the Agreed Order is not adopted.
2. Respondent is assessed a civil penalty of Five Hundred Dollars (\$500.00). Respondent shall pay said penalty amount no later than fifteen (15) days after the Effective Date ("Due Date"). In the event that the civil penalty is not paid by the Due Date, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101.
3. In the event the terms and conditions of this Agreed Order are violated, Complainant may seek additional relief.
4. Civil penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number of this action and shall be mailed to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room 1340
100 North Senate Avenue
Indianapolis, IN 46204

5. This Agreed Order shall apply to and be binding upon Respondent and his successors and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter his status or responsibilities under this Agreed Order.
6. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
7. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of his obligation to comply with the

- requirements of his applicable permit or any applicable Federal or State law or regulation.
8. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation.
 9. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the NOV.
 10. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the United States Environmental Protection Agency ("EPA") or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the EPA or any other agency or entity.
 11. The parties were free to consult with their respective counsel regarding entry into this Agreed Order to the extent each deemed necessary.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

TECHNICAL RECOMMENDATION:
Department of Environmental
Management

By: David P. McIver
David P. McIver, Chief
Enforcement Section
Office of Air Quality

Date: December 15, 2021

RESPONDENT: *
Cliff Bennett

By: _____

Printed: _____

Title: _____

Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT THIS

_____ DAY OF _____, 20_____.

For the Commissioner:

By: _____
Matthew Stuckey, Assistant
Commissioner
Office of Air Quality
Indiana Department of Environmental
Management

*** In the event that Respondent does not accept the settlement offer contained in this Agreed Order, IDEM notes that this document is a qualified offer of settlement, and therefore Rule 408 of Indiana Rules of Evidence applies to this document, rendering it inadmissible.**

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